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Letter dated 17 April 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council

I have the honour to forward, enclosed herewith, the comments of the Government of the Republic of Serbia on the report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (S/2008/211) (see annex), together with comments on the technical assessment of progress in the implementation of the standard for Kosovo (enclosure I) and the resolution of the National Assembly of the Republic of Serbia on the confirmation of the decision of the Government of the Republic of Serbia on the annulment of the illegitimate acts of the Provisional Institutions of Self-Government in Kosovo and Metohija concerning the proclamation of unilateral independence (enclosure II).

I should be grateful if you would have the present letter and its enclosures circulated to the members of the Security Council and issued as a document of the Security Council.

(*Signed*) Pavle **Jevremović**
Ambassador
Permanent Representative

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Annex to the letter dated 17 April 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council

Comments on the report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (S/2008/211)

1. The key event in the period covered by this report was the act of secession of the part of the territory of the Republic of Serbia, a sovereign State and a member of the United Nations, declared by the Provisional Institutions of Self-Government which proclaimed independence of the province of Kosovo and Metohija.

2. The Republic of Serbia calls upon the United Nations and all its members to fully respect its sovereignty and territorial integrity and to reject the illegal and unilaterally proclaimed independence of the province of Kosovo and Metohija. Serbia expects the United Nations representative in the province to take adequate measures.

3. We recall that the proclamation of independence of any part of the territory of a sovereign State without this State's consent represents an illegal act which is contrary to the Charter of the United Nations and the OSCE Final Act. The unilateral proclamation of independence of the province of Kosovo and Metohija is in contravention to the Constitution of the Republic of Serbia and the relevant international documents — Security Council resolution 1244 (1999) and the Military Technical Agreement (1999) — which are the legal bases for the presence of UNMIK and KFOR as interim authorities in the province.

4. We recall that unilateral declaration of independence by secessionists in the province of Kosovo and Metohija is dangerous for the stability of Serbia and the region.

5. We point out that, by supporting the ethnic Albanians in the province of Kosovo and Metohija and by recognizing their unilaterally proclaimed independence, some United Nations Member States have made a precedent. By doing so, these United Nations Member States have recognized the right to secession of a part of the territory of a United Nations Member State without its consent and the right to secession to a national minority (we recall that, in addition to the Albanian minority, 27 other minorities live in Serbia); given legitimacy to ethnic cleansing; and legalized legal violence over the Republic of Serbia and international law, as well as the threat of violence as a means for creating new States.

The international documents which make the legal framework of the system of international security do not envisage these possibilities.

6. We recall that the Republic of Serbia, aware of the need for a lasting and sustainable solution to the future status of the province of Kosovo and Metohija, participated actively in the negotiations held under the auspices of the United Nations and presented proposals for a solution. We recall that Serbia was guided in these negotiations by resolution 1244 (1999). The solution to the future status of the province has to be achieved only by the agreement of all parties and it must imply substantial autonomy within the Republic of Serbia, as envisaged in resolution 1244

(1999). We recall that by its proposals and active participation in the negotiations, Serbia sought to make a contribution to stability, security, development and integration processes in the region as well.

We recall that the direct negotiations between Belgrade and Priština with the Troika moderators lasted nominally 120 days, but effectively only 13 hours. Serbia pointed out frequently that the time envisaged was insufficient for serious negotiations. Serbia also pointed out that the Albanian side spurned Serbia's proposals as it was given undisguised support of the United States and some other countries which openly supported "supervised independence".

We recall that Serbia's proposal on substantial autonomy offers a lasting and sustainable solution to the future status of the province of Kosovo and Metohija. The implementation of this proposal would enable ethnic Albanians in the province to have autonomy; the Serbs and other communities in the province would be able to protect their identity and security; while Serbia would preserve its sovereignty and territorial integrity. We recall that, during the negotiations, Serbia pointed out that integration of ethnic Albanians from the province of Kosovo and Metohija into the State institutions of Serbia (which they had left upon their own initiative) was possible whenever they should be ready and that concrete modalities of this integration could be established by agreement and in accordance with the interests of the two sides.

7. We point out that Serbia will continue to strongly advocate a peaceful solution to the status of Kosovo and Metohija and a continuation of negotiations, firmly believing that, in the long run, only a compromise solution can be sustained.

8. We point out that Serbia is cooperating with international presences in Kosovo and Metohija pursuant to resolution 1244 (1999) and the Military Technical Agreement. Serbia recognizes and cooperates with UNMIK, as the only legitimate civil mission, and KFOR, as the only legitimate military mission, in the province. Serbia may accept the presence of other missions in the province only under a Security Council mandate, and with the consent of Serbia. Otherwise, the authority of the United Nations and the sovereignty of the Republic of Serbia would be jeopardized and resolution 1244 (1999) and the Military Technical Agreement violated in a direct way.

9. We point out that it is a matter of serious concern that the United Nations (UNMIK) failed to react to the unilateral proclamation of independence of the province of Kosovo and Metohija. The Republic of Serbia expected the United Nations representatives in Kosovo and Metohija to annul this illegal act. These expectations were based upon previous UNMIK practice in line with its mandate.

Contrary to that, the United Nations took a neutral stance in regard to the "status of Kosovo".

10. We point out that the report mentions the unilateral declaration of independence only in passing and refers to the existence of "evolving circumstances" on the ground. The report makes no mention of the requests of Serbia or of its contention that the "evolving circumstances" represent a violation of resolution 1244 (1999).

11. We point out that the report also refers to the preparations that are under way for the implementation of the Ahtisaari Plan and the so-called "supervised

independence" with the agreement of UNMIK. We recall that the Ahtisaari Plan was neither considered nor adopted by the Security Council.

We recall that only the Security Council can decide on the status of Kosovo and Metohija. Any attempt to impose a solution as a fait accompli seriously undermines the authority of the Security Council and the sovereignty of the Republic of Serbia.

12. Serbia requests urgent restoration of the original UNMIK mandate in accordance with resolution 1244 (1999), the Charter and the principle of impartiality. For Serbia it is completely unacceptable to consider the "evolving circumstances" after the unilateral declaration of independence of the province as a basis for UNMIK's activities in Kosovo and Metohija.

13. We point out that Serbia has taken the following measures:

- The National Assembly and the Government of the Republic of Serbia adopted the "Decision on the annulment of the illegitimate acts of the provisional institutions of self-government in Kosovo and Metohija on their declaration of unilateral independence" (see enclosure II).
- The Public Prosecutor pressed charges against leaders of the province's bodies which on 17 February 2008 adopted the illegal act of unilateral declaration of independence.
- Serbia addressed the United Nations organs, requesting them to annul the illegal act of unilateral declaration of independence, i.e. the secession.
- Serbia offered to UNMIK the proposal of an Agreement between UNMIK and the Republic of Serbia on joint implementation of resolution 1244 (1999) after the illegal declaration of independence by the Provisional Institutions of Self-Government.

We point out that Serbia did not use force, or economic sanctions, against secessionists in the province of Kosovo and Metohija.

14. We recall that the unilateral declaration of independence, proclaimed by the provincial Assembly on 17 February 2008, is not the first declaration of the kind: on 2 July 1990 the Provincial Assembly composed solely of ethnic Albanians proclaimed the Declaration on Secession of the Republic of Kosovo; on 23 May 2002 members of the Kosovo Assembly of Albanian nationality voted in favour of a resolution which negated the Agreement on Demarcation between the Federal Republic of Yugoslavia and Macedonia, as well as the Federal Republic of Yugoslavia-UNMIK Common Document. The then Special Representative of the Secretary-General Michael Steiner declared this resolution null and void; on 13 February 2003 the Assembly of Kosovo adopted by acclamation the common statement of a number of parliamentary groups' leaders, which supported the initiative to have the Assembly declare Kosovo's independence. UNMIK did not support this act.

We point out that secession has been a long-term goal of only a part of the population of the province of Kosovo and Metohija. We recall that in the elections (17 November 2007) there was no support of the electorate for independence: although independence was the main slogan of the campaign — only 40.1 per cent of registered voters cast their ballots, according to the Central Election Commission from Priština (www.cec-ko.org). Besides, neither Serbs nor members of other

ethnically discriminated communities participated in these elections (according to the Central Election Commission, only 7,247 of them cast their ballots).

15. The illegal act of the Provisional Institutions of Self-Government and the failure of UNMIK to respond accordingly initiated a chain of events important for stability and security in Serbia and the region:

- On 22 February 2008 KFOR and UNMIK commenced implementation of the so-called "new security measures" at all crossings along the administrative line between central Serbia and the province. By doing so, UNMIK breached the Military Technical Agreement and resolution 1244 (1999). The principle of free flow of people and goods is jeopardized.

- On 28 February 2008, without United Nations approval, the "International Steering Group for Kosovo" was established, comprising 15 States which supported the unilaterally declared independence of Kosovo and Metohija. The establishment of such an "association" violates the fundamental principles upon which the free and democratic international order is based.

- On 5 March 2008 a meeting of the "Strategic Group on Transition" was held with the participation of J. Ruecker, Head of UNMIK; Xavier Bout de Marnac, KFOR Commander; L. Rossin, Deputy Special Representative of the Secretary-General; P. Feith, European Union special representative who, following the decisions of the European Union Council and the "International Steering Group for Kosovo", is at the same time the international civil representative for Kosovo; R. Davidi, Head of the European Commission's Office in Priština; T. Kaidanov, Head of the United States Office in Priština; as well as representatives of the European Union Planning Team, KFOR, Pillar IV of UNMIK and other international institutions in Kosovo and Metohija. The meeting considered the adoption of new laws pursuant to the Ahtisaari plan which, we recall, was neither considered nor adopted in the Security Council, the adoption of the Constitution of "independent Kosovo" and issues related to the transformation of certain international institutions into Kosovo institutions (like the Kosovo Trust Agency).

- On 7 March 2008 the Government of "independent Kosovo" proposed, and on 13 March the Assembly adopted, 10 laws based upon the "Ahtisaari plan", which we recall was neither considered nor adopted in the Security Council, including the Law on the Ministry of Defence, Law on Security Forces (i.e. the Army), Law on the Establishment of the National Security Council, Law on the Ministry of Foreign Affairs and the Diplomatic Service of Kosovo and the Law on Civil Aviation. On 13 March, these laws were adopted in the Kosovo Assembly. This represents a flagrant violation of the provisions of the Military Technical Agreement and those of resolution 1244 (1999). UNMIK took no measures to annul these decisions as it is expected to do under the principle of impartiality and its mandate.

- On 9 March 2008 the Prime Minister of "independent Kosovo" placed a signboard with the inscription "Welcome to the Republic of Kosovo" at the administrative line (Gate 3, at Merdare). This is a flagrant violation of the Military Technical Agreement and resolution 1244 (1999). KFOR and UNMIK took no measures in pursuance of their mandates and the principle of impartiality and did not remove the signboard.

- On 12 March 2008, a Serb, a potential returnee, who came with a group of internally displaced persons under the UNHCR and the Danish Refugee Council "Go and See" programme, was arrested in Peć. This latest arrest under false charges will discourage the internally displaced persons (207,000 in Serbia and 18,000 in Montenegro according to UNHCR) from returning to their homes. We recall that the report also refers to the overall stagnation of returns due to numerous obstructions.

- On 17 March 2008, on the fourth anniversary of the Pogrom against Serbs in 2004, UNMIK and KFOR special forces staged an anti-terrorist operation in Kosovska Mitrovica (north) in which they arrested peacefully protesting employees of the judiciary, who requested UNMIK to resume its responsibilities in the justice sector according to its mandate and to regulate their position within the UNMIK justice sector. They also wanted to return to work in the court building which had been abandoned by the Albanian employees. On the same day the Government of the Republic of Serbia called on the United Nations to conduct an impartial international investigation and establish responsibility and sanction those who resorted to excessive use of force in Kosovska Mitrovica when one person was killed and 150 others wounded.

- On 2 April 2008 European Union special representative P. Feith who had been made international civil representative for Kosovo by the European Union Council decision, certified the Draft Constitution of Kosovo. This is unacceptable, since the certification of laws is among competences of the Special Representative of the Secretary-General (UNMIK). Serbia cannot accept the illegal transfer of competences from UNMIK to the European Union rule of law mission (EULEX).

Enclosure I

Comments on the technical assessment of progress in the implementation of the standards for Kosovo

(Prepared by the Special Representative of the Secretary-General for Kosovo)

- In this report the Special Representative of the Secretary-General J. Ruecker only mentions that the independence of the province was unilaterally declared by the Provisional Institutions of Self-Government. He only declares a "new reality" on the ground. There is no assessment of and reaction to this illegal act. The report seems to suggest that the Provisional Institutions had not unlawfully and unilaterally declared independence of the province, and that the situation on the ground had not been substantially changed.
- The report does not refer to the request of Serbia or her arguments that the "new reality" is the result of a violation of resolution 1244 (1999).
- In this report the Special Representative does not declare that UNMIK transferred its return related competences to the Provisional Institutions of Self-Government, although return related issues are among the special, reserved responsibilities of the Special Representative (UNMIK).
- After submitting this report, the Special Representative of the Secretary-General transferred additional competences to the "government of Kosovo" contributing by this to the legalization of "evolving circumstances", i.e. "independent Kosovo".
- Standards of the United Nations have been the essential part of any discussion on the status of Kosovo and Metohija. When established, the standards represented a priority and a precondition for the status ("standards before status"; "standards and status"). By decision of the European Commission, UNMIK and the Prime Minister of the Provisional Institutions of Self-Government, "standards were included in the long-lasting process of European integration". According to this decision their realization should be expected in a very, very distant future.
- In the report, the Special Representative does not mention when and upon which decision was the UNMIK mandate changed. However, in the report he does inform that decisions and actions of UNMIK and the Provisional Institutions of Self-Government have been performed in accordance with the Ahtissari plan which, we recall, was neither considered nor adopted by the Security Council.
- The report does not refer to the fact that international representatives have not been cooperating with the International Criminal Tribunal for the former Yugoslavia to collect evidence and sentence those who perpetrated crimes over Serbs and members of other ethnically discriminated communities.

Functioning of democratic institutions

1. In newly "evolving circumstances", problems induced by the preceding transfers of competences from UNMIK to the Provisional Institutions of Self-Government have aggravated. These institutions have proved to be incompetent and incapable of providing adequate servicing to the people, despite all international

support. For all ethnically discriminated groups the most important have always been the problems linked to security of life and property. The preservation of Serbian cultural heritage and holy sites has been of utmost importance for Serbs. In general, security diminished, especially for all those living in enclaves.

2. Human rights in the province are persistently endangered. According to the last report of Human Rights Watch (*World Report 2008*) "Kosovo's final status negotiation overshadowed its bleak human rights situation. Minorities continued to face violence, intimidation, discrimination, and difficulties accessing public services. There is limited progress on the return of displaced persons and refugees to their homes. Weaknesses in the criminal justice system frustrated efforts to create accountability."

3. Multi-ethnicity was a proclaimed goal of all international and local factors in the province of Kosovo and Metohija, that is why it is mentioned several times in the report. Regrettably, it has been achieved only pro forma, to serve the needs of those who supported "independence". Practice is somewhat different.

4. The report mentions that Serbs and others were included in freely and democratically elected institutions which unilaterally proclaimed independence. This had to prove that Serbs and others supported this self-proclaimed independence. As reported by the Central Election Commission from Priština, parliamentarians of Serbian origin got only 7,247 votes (out of estimated 114,000 voters). Ministers of Serbian origin got only 1,907 votes. The question is — do they really represent the Serbian electorate in the province, or are they used to serve other purposes?

5. More than 2,000 employees decided not to join the secessionists. They remained loyal to their country, consequently they left the Provisional Institutions of Self-Government after independence was unilaterally proclaimed (17 February 2008): Kosovo Police Service, Kosovo Protection Corps, revenue service, customs service, judicial institutions, penal institutions, local self-government institutions, ministries, public media, public enterprises, educational institutions, health-care system, social service and other public services.

6. Pressure upon Serbs and other ethnically discriminated communities performed in many ways does not contribute to the proclaimed multi-ethnicity of the province:

- The Gorani community has been under open and constant assimilation pressures. Pressures culminated this school year with forced appointments of Albanian professors and teachers and imposition of curricula in Albanian. This form of "soft ethnic cleansing" is a reason why Gorani have been leaving the province.
- New pressures upon Roma children to learn in Albanian (they have been learning in Serbian according to Serbian curricula).
- School-bus escort provided by KFOR has been cancelled, and in some areas it is provided only randomly (Obilić, for instance). The children need this escort due to increased security risks.

UNMIK did nothing to stop pressures and protect members of ethnically discriminated communities.

7. Yet another "multi-ethnicity" example is linked to the municipality of Novo Brdo. Serbs constitute the majority in the municipal assembly (10 out of 17 representatives are Serbs), but with the support of the Special Representative of the Secretary-General an ethnic Albanian is the mayor. This created discontent and Serbs left the assembly and local administration. Since then, Albanian interest in buying Serbian land in this area has been rapidly increasing. It is feared that due to the high level of corruption in Kosovo and Metohija, and with the help of the new Albanian administration the ethnic structure may be soon changed.

8. UNMIK has also implemented some specific measures since self-proclaimed independence. One of them has been performed on 3 March 2008, when KPS (Kosovo Police Service) confiscated near Vučitrn a contingent of medications and relevant equipment worth €43,000 shipped for the 95,000 patients of the Clinical Center "Priština" (relocated to Gračanica). Confiscated material was conferred to UNMIK customs service where, contrary to "Excise Tax Code of Kosovo", i.e. UNMIK regulation 2005/32, Annex B (b), it was retained for days. Only after continuing pressure of the public and actions taken by the Serbian Government before the World Health Organization and ICRC, UNMIK released the shipment on 14 March.

Later, UNMIK also impounded in the same way supplies for the laboratory in municipality Lipljan (Donja Gušterica).

These UNMIK actions have directly endangered the medical protection of Serbs and others, and additionally increased fears and insecurity, since health care is already imperilled due to limited freedom of movement. UNMIK did not act in accordance with the principle of impartiality and its mandate.

9. The report omits to mention the persistent health hazard to which residents of the UNMIK-run Mitrovica camp for Roma, Ashkalia and Egyptians are exposed. In January, another little boy died there as the latest, 27th victim of lead poisoning. According to WHO, the level of lead concentration in the area of the camp exceeds 300 times the healthy acceptable level, and hits children most heavily.

The rule of law

10. Human rights in the province are persistently endangered. Human Rights Watch in its last report (*World Report 2008*) states: "Kosovo's final status negotiation overshadowed its bleak human rights situation. Minorities continued to face violence, intimidation, discrimination, and difficulties accessing public services. There is limited progress on the return of displaced persons and refugees to their homes. Weaknesses in the criminal justice system frustrated efforts to create accountability."

11. Amnesty International in "Kosovo (Serbia): The challenge to fix a failed UN justice mission" (December 2007) is reporting: "UNMIK's approach to building the judicial system continues to be marked by a lack of clear planning or vision. The international judges and prosecutors were introduced gradually, one at a time in response to a crisis in the justice system, allowing the rest of the trials to proceed without any scrutiny or independent and impartial judicial correction"; and "Consolidation of legislative, executive and judicial functions in one person (Special Representative of the Secretary-General), instead of ensuring the classical

separation of powers with checks and balances between the three branches led directly to abuses".

12. After 17 February 2008, Serbs and members of other ethnically discriminated communities employed in the UNMIK justice sector refused to work in the judicial institutions of "independent Kosovo".

We recall that persons who held judicial positions — judges, prosecutors, magistrates — in line with the justice system of Serbia have been incorporated into the justice system of the province formed by UNMIK in accordance with the Declaration for the inclusion of Serbs in the Kosovo justice system (signed in 2002 by Vladan Batić, then Minister of Justice of Serbia, and Jean-Christian Cady, then Deputy Special Representative of the Secretary-General for police and justice). They have been appointed for judicial positions by the head of UNMIK.

We recall that UNMIK later transferred certain jurisdiction in legal matters (organization and functioning of courts and prosecution, and election of judges and prosecutors) to the Provisional Institutions of Self-Government by Regulation 2005/53. Accordingly, the Kosovo Ministry of Justice and Judicial Council were formed.

13. Serbs who left "independent Kosovo" institutions wanted UNMIK to resume its responsibilities in the justice sector according to its mandate. They also wanted to regulate their position within the UNMIK justice sector. They demanded that UNMIK discuss the issue, but UNMIK did not respond.

14. These justice employees were protesting in front of the District and Municipal Court building in the northern part of Kosovska Mitrovica since 21 February 2008. They organized a committee to negotiate with UNMIK to resume its responsibilities and to let them use the abandoned building. UNMIK did not react.

We recall that this building was taken over by UNMIK (August 1999). After 17 February 2008 Albanian Court employees left the Court building and moved to the southern part of Kosovska Mitrovica.

We recall that the protest was peaceful; KFOR and UNMIK police protected the building.

On Friday, 14 March 2008, around 9 a.m., these protesters entered the building (corridors but not the offices). They asked UNMIK to take the documentation of the judicial institutions of the Provisional Institutions of Self-Government. A whole day duty was organized.

We recall that the protesters did not use force when entering and while staying in the building, but the Special Representative of the Secretary-General qualified this event as an "attack" and "violence" by which "one of the UNMIK 'red lines' was crossed", which cannot be tolerated; he threatened the protesters with severe measures.

On Monday, 17 March, at 5.30 a.m. 400 members of the UNMIK and KFOR special antiterrorist units started "liberating" the Court building. This anti-terrorist operation was performed by UNMIK police's elite anti-terrorist units (Team 6). They broke into the Court building and arrested a group of 53 employees. None of the arrested tried to resist. The arrested people were handcuffed or tied, and then laid on the floor like terrorists. They were kept in this humiliating position until

7 a.m. when they were brought outside to be transferred to the jail in Priština. During the questioning in the District Jail in Priština, the arrested were held barefoot and maltreated.

This arrest caused rage and protests of citizens who gathered in front of the building during these long hour and half. They threw stones and set tyres on fire. UNMIK police and KFOR used tear gas, stun grenades and rubber bullets. During the clash UNMIK and KFOR forces also opened fire; a sniper was also shooting from the Court building. The result was around 150 wounded, considerable material damage and air pollution. A Ukrainian UNMIK policeman was seriously wounded and died on 18 March.

Due to public pressure all those arrested were released in the afternoon of the same day.

15. We recall that in the evening of the previous day in Gračanica, i.e. some hours before this antiterrorist action, the Minister for Kosovo and Metohija, Slobodan Samardžić, held a meeting with Deputy Special Representative of the Secretary-General L. Rossin and assured him that the protest would be resolved peacefully on 17 March during his previously announced stay in K. Mitrovica (of which L. Rossin was informed three days before, according to the procedure).

16. After two days Court employees continued their protests with the same requests: that UNMIK resume its responsibilities in the province's justice sector according to its mandate and to regulate their position within the UNMIK justice sector.

17. We recall that the Ministers of the Interior of Ukraine and Poland (whose nationals, UNMIK police officers, took part in the clashes) and the UNMIK administrator of K. Mitrovica, G. Galuchi, accused UNMIK officials for the clashes.

18. We recall that the same day (17 March), the Government of the Republic of Serbia asked the United Nations for an impartial international investigation of the events in K. Mitrovica and adequate sanctions for those responsible for the excessive use of force.

19. We recall that this antiterrorist action of UNMIK and KFOR forces in K. Mitrovica against the Court employees took place on the fourth anniversary of Albanian organized violence against Serbs that started on 17 March 2004, when in only two days 3,870 Serbs were expelled, eight Serbs killed and 143 wounded, six towns and nine villages ethnically cleansed, 935 houses and public objects demolished, 35 churches and monasteries burnt down (18 of which were registered as monuments of particular cultural value; including one that is on the UNESCO World Heritage List) and three cemeteries destroyed. According to international sources, some 50,000 persons took part in these events. At that time, KFOR and UNMIK were responsible for security and peace in Kosovo and Metohija.

According to this report, the penal liability of persons who took part in the Pogrom against Serbs in March 2004 is very little: Municipal and District Courts in Kosovo and Metohija sentenced 180 persons (out of 300 indicted and according to the report there are only 21 pending cases); misdemeanour courts sentenced 116 persons (out of 157 accused and according to the report there are no more unsolved cases).

20. Prison guards of Serbian nationality in District Jail in Kosovska Mitrovica (61 persons), Lipljan (96 persons) and Gnjilane (17 persons) have terminated contacts

with the Provisional Institutions of Self-Government after 21 February 2008. They wanted to continue work only under the UNMIK justice system.

21. Employees of the Court Liaison Office in Gračanica (28 persons) have terminated contacts with the Provisional Institutions of Self-Government. This office was established by the UNMIK Department of Justice in 2002 to enable access to courts (transportation, documentation, interpreters) for Serbs and members of other ethnically discriminated communities. After the "independence", the employees refused to be a part of the new judicial system. Unfortunately, the UNMIK Department of Justice pressurized them to return under the Provisional Institutions.

22. Serbs in the Kosovo Police Service refused to participate in the new chain of command, and requested to be under UNMIK command and to work and patrol only in Serbian areas. They left KPS, but continue to perform their regular duties where it was possible.

In central Kosovo and Pomoravlje Serbs left KPS and consigned their arms and equipment. KPS suspended them and started disciplinary proceedings. In Gračanica, Kusce and Ranilug, for example, Serbs had the same requests, but UNMIK Police Commissioner L. Wilson asked them to return under KPS command. They refused and continue to protest daily; UNMIK police and KPS have taken over their duties. Gračanica, a place where Serbs are predominant, is controlled by KPS special unit (ROSU), which together with the traffic police harasses local citizens.

Freedom of movement

23. Fear is part of the daily life of Serbs and members of other ethnically discriminated communities, particularly in the enclaves. Memories of maltreatment are very vivid. This fear is preserved due to constant low intensity terror — constant theft of vehicles, agricultural machines, cattle, etc. International representatives do not see this constant low intensity terror as ethnically motivated.

24. International representatives have not supported the International Criminal Tribunal for the former Yugoslavia to collect evidence and sentence those who perpetrated crimes against Serbs and members of other ethnically discriminated communities. On the contrary.

25. Although in the report it is stated that there is freedom of movement for Serbs and members of other ethnically discriminated communities, everyone is aware that the overall security situation remains precarious, and that it is prone to grave changes, which may be triggered at any time. Inter-ethnic relations have remained tense, inter-ethnic dialogue is missing, reconciliation has never been genuinely initiated.

26. Restricted freedom of movement due to security risks still poses a grave problem particularly for the owners of agricultural land. They cannot use or cultivate it, thus being denied the only possibility available for generating income.

27. Downgrading escort for school buses was a bad decision which may result in grave consequences.

Sustainable return and rights of ethnically discriminated communities

28. We recall that UNMIK and its Office for Return and Communities transferred their return-related competences to the Provisional Institutions of Self-Government on 12 December 2007. This transfer was performed at a very delicate moment for the province, Serbia and the region. This transfer is in direct opposition to UNMIK's original mandate and resolution 1244 (1999). We recall that return-related competences were assigned to UNMIK (Special Representative of the Secretary-General) as reserved responsibilities i.e. non-transferable competences.

We recall that by this transfer UNMIK effectively also transferred to the Provisional Institutions of Self-Government its responsibilities, since it did not take any further step to support the process of return by removing the obvious obstacles.

29. The fact that UNMIK transferred its reserved return related competences to the Provisional Institutions of Self-Government is omitted in the report of the Special Representative.

30. We recall that the Provisional Institutions of Self-Government are not capable of performing even minor assignments; they lack expertise, experience and resources. This has been confirmed in all international reports from the province Kosovo and Metohija.

31. We underline that in the newly "evolving circumstances" the Provisional Institutions of Self-Government ceased to exist: by virtue of unilaterally declared independence they have become institutions of "independent Kosovo". We recall that UNMIK transferred its return-related competences to the Provisional Institutions, and that in the "evolving circumstances" it should retake its competences, particularly those related to return.

If UNMIK still intends to support the return of internally displaced persons and internally-internally displaced persons, it must retake its competences in this field. This is necessary first of all because neither the majority of internally displaced persons, nor the Government of the Republic of Serbia recognize the "independent Kosovo's" institutions.

32. The return of internally displaced persons to the province has been the responsibility of UNMIK and has been organized by UNHCR. It started with returns to Osojane, Biče and Grabac and now is due in Novi Badovac and Klobukar. The process of return could be divided into four stages:

First, when UNMIK had responsibility and UNHCR organization and control. That was the shortest stage and the achieved results still serve as an example (Osojane).

Second, when the UNMIK Office for Return and Communities[1] had responsibility and control. That was the longest stage, with very modest results.

Third, when the Ministry for Communities and Return of the Provisional Institutions of Self-Government had control and the UNMIK Office for Communities, Return and Minorities had responsibility. That lasted nearly two years and gave no results.

Fourth, when the process of return was lead by the Working Group on Returns, within the Direct Dialogue Belgrade-Priština, which was organized by UNHCR Belgrade and UNHCR Priština, always with the presence of UNMIK. *Voluntary and*

[1] Later renamed UNMIK Office for Communities, Return and Minorities.

Sustainable Return (June 2006) was signed based on respect of human rights, international humanitarian standards, and the United Nations "Guiding Principles on Internal Displacement". That was the only stage to introduce necessary innovations in the process — the integration into the place of refuge for internally-internally displaced persons[2] (Novi Badovac is an example) and the right to return to the province to any chosen place for internally displaced persons[3] (Klobukar is an example). The results could have been even better had someone disabled obstructions from Priština. UNHCR due to its competences did only acknowledge the obstruction of Priština; the work has been constantly delayed. The Technical Subgroup of the Direct Dialogue Working Group for Returns had only two meetings during 2007 and no meeting this year. The work on return is blocked.

33. After the self-proclaimed independence of the province, returnees are facing a long line of problems:

- Return process without UNMIK participation.
- Obstruction of organized return by local authorities and some international organizations which are favouring individual instead of collective return.
- Inaccessibility of public services (health care, education, justice, public administration, social welfare, transport, economic development programmes).
- Threatened property rights (dysfunctional restitution and property return mechanisms).
- Mistrust regarding local authorities and security forces.

34. The Provisional Institutions of Self-Government have been discouraging the return process in different ways. Since independence was declared, this discouraging became evident. The example is the arrest of Momčilo Jovanović who with the other internally displaced persons visited their devastated homes in Vitomirica, within the "Go and See" project organized by UNCHR and the Danish Refugee Council. He was arrested on the false report of his former Albanian neighbour, even though there were no charges against him nor did he encounter any problems during his previous two visits. International prosecutor (M. Bamieh) requested incarceration which was denied by international judge (L. Dumlao) due to lack of evidence. Under local pressure, the District Court in Peć sentenced him to 30 days home detention (judgment RRN, No. 33/08)! We recall that Jovanović's house no longer exists and that he was to be in detention in someone else's home (no guarantees for his security). UNMIK did not take any measures in accordance with the principle of impartiality and its mandate.

35. We recall that the Kosovo Property Agency (KPA) closed property claims intake on 3 December 2007, since the Special Representative of the Secretary-General failed to extend the deadline for submission of claims, despite requests from KPA and the Ministry for Kosovo and Metohija of the Serbian Government. We recall that UNMIK did not help the internally displaced persons, even though there is still a big number of claims filed (500 property claims weekly, according to our sources).

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[2] Internally-internally displaced persons are persons forced to leave their homes in 1999 and 2004, but who remained as displaced within safe zones in Kosovo and Metohija.

[3] Internally displaced persons are persons forced to leave their homes in 1999 and 2004 and who left for central Serbia.

This, together with other UNMIK decisions, does not encourage the return process.

36. In addition to political and security problems, the return process is severely impeded also by financial aspects. We remind that in the province the 2008 return budget is €7.14 million, whilst the completion of 23 already approved projects of organized return requires €18 million.

37. Despite all difficulties, many of the 207,000 internally displaced persons in Serbia and 18,000 in Montenegro would like to return. Therefore, it is necessary to restore the return procedures and enable sustainable return. UNMIK should resume its responsibilities.

Economy and property rights

38. We recall that management over public enterprises was under UNMIK jurisdiction, and that UNMIK transferred it to the Kosovo Trust Agency (KTA). Announced was a further transfer of these competences to local authorities according to the Ahtisaari plan which, we recall, was neither considered nor adopted by the Security Council.

39. We point out that the "Government of Kosovo" on 28 March adopted a decision to privatize three big public enterprises: Priština Airport, Kosovo Energy Corporation (part of Electric Power Industry of Serbia) and the Post and Telecom of Kosovo (part of PTT Serbia). Although privatization is still within competences of UNMIK and KTA, the Special Representative of the Secretary-General did not react to this.

40. We point out that after submission of this report, UNMIK (Special Representative of the Secretary-General) changed on 20 March 2008 Regulation 2002/12 only in Article 12.2, which regulates the appointment of Kosovo directors to the Managerial Board of KTA (UNMIK Regulation 2008/16). The change is that now the directors will be appointed by the "Kosovo Government" instead of the Provisional Institutions of Self-Government, as was the case until now.

We point out that by this Regulation the Special Representative of the Secretary-General has made an attempt to legalize the "Government of Kosovo" instead of the Provisional Institutions of Self-Government.

The question is whether the Special Representative of the Secretary-General was forced to make this unlawful transfer of competences.

41. We point out that UNMIK has taken over electric power from Serbia only in cases of accidents, and that it owes Serbia $4.9 million. However, UNMIK has not yet accepted Serbia's offer (in mid January 2008) to donate 25,000 megawatt-hours, which would improve the situation of 17,500 households (12,500 Serbian and 5,000 Albanian) in Šilovo, Suvi Do, Kusce near Gnjilane, Ropotovo near Kosovska Kamenica, Parteš in Kosovsko Pomoravlje, Gušterica and adjacent villages near Pomoravlje, Slivovo near Novo Brdo, Prilužje near Obilić, Lazarevo for supplies to Babin Most and Grace, Janjevo for supplies to Sušice and Gornja Gušterica and Plemetina near Obilić, as well as villages surrounding Štrpce.

42. Corruption is among the major problems in Kosovo and Metohija. There are recurrent financial irregularities in the Provisional Institutions of Self-Government ministries and the UNMIK-run entities: five directors in the Ministry for

Communities and Return were suspended; two senior officials from Priština Airport were arrested on suspicion of corruption; others are also mentioned.

Transparency International has recently published its *Global Corruption Barometer 2007*, which ranks the province Kosovo and Metohija among the most corrupt countries and territories in the world.

43. We also recall that the rental scheme for occupants of real estate introduced by the Kosovo Property Agency is not functioning. The occupants do not pay the rent on a mass scale. Such occupants include international organizations (OSCE, KFOR and others). The majority of the damaged properties belong to displaced Serbs. UNMIK did not protect them.

Serbian cultural heritage in Kosovo and Metohija

44. Self-proclaimed independence of a part of the Serbian State influences negatively the fulfilment of undeniable rights of the Serbian people to take care of their own cultural heritage in Kosovo and Metohija, i.e. Old Serbia. Events in March 2004 have proven the efforts of UNMIK, KFOR and the Provisional Institutions of Self-Government to be insufficient and inadequate. This justifies doubts that institutions of "independent Kosovo" could genuinely protect Serbian cultural heritage.

45. We point out that during the Ohrid Tourism Fair (January 2008) at the stand of UNMIK/Provisional Institutions of Self-Government propaganda material presented misinformation about Serbian history and Serbian spiritual and cultural heritage in the province Kosovo and Metohija.

46. We point out that, on the official website of the Ministry of Trade and Industry of the Provisional Institutions of Self-Government, under UNMIK control, were presented false facts that refer to history, culture and identity of the Serbian people.

47. Serbia finds unacceptable the implementation of the Ahtisaari plan in the area of Serbian cultural heritage without the consent of Serbs and their State and church.

48. Thirty Serbian experts employed in the domain of culture (primarily the media) have left the "independent Kosovo's institutions".

49. The commencement of activities of the Kosovo Cadastral Agency is announced in the report (paragraph 65). We point out that it is unacceptable to introduce any opportunity for possible manipulation with the most vital property data. Any re-registration of property is unacceptable without the Serbian party. We point out that cadastral institutions and data are in central Serbia. The Serbian Orthodox Church is the owner of a significant portion of real estate in the province.

50. We recall that the law on the treatment of illegal construction (report, paragraph 66) is paving the way for legalization of the illegally constructed facilities, many of which endanger integrity of the Serbian spiritual and cultural heritage sites.

51. Not all interventions of the Reconstruction Implementation Commission can be marked as successful (report, paragraph 72). Some of them would hardly pass any professional criteria of a competent and objective body.

52. The 24-hour static police presence guarding Serbian holy sites (cultural heritage, particularly sites on the World Heritage List) illustrates the peril

threatening the Serbian heritage not only in Prizren, Priština and Podujevo (report, paragraph 73). The 24-hour static police presence and patrols increased by over 30 per cent are proper acknowledgment of the 24-hour threat against all Serbian cultural and spiritual heritage.

53. In paragraph 74 of the report we read that incidents were "... motivated by profit ... and not ethnicity". It is not acceptable that UNMIK justifies any vandalism by profit motivation because 24-hour security presence and increased patrolling are not there to prevent crimes motivated by profit.

54. In paragraph 75 the plunder of metal segments on Serbian graves is explained by profit. How, then, can one explain desecration of grave markers made of stone?

55. In paragraph 76 it remains unclear how it was possible for UNMIK to endorse the Law on Protective Zones since arguments against such a solution, presented in the Vienna negotiations, were fully accepted by the experts of the Office of the Special Envoy for the Future States Process. The protective zones encircling any given site cannot be delineated without proper participation of relevant Serbian institutions and the owners of the site (Serbian Orthodox Church and the State of Serbia).

56. In paragraph 77 we read that a central database for the cultural heritage in Kosovo and Metohija is in progress. We recall that it cannot be performed without participation of the Serbian party. A database of cultural heritage in the province Kosovo and Metohija already exists and may only be supplemented, but not discarded, changed or replaced by a new one.

57. UNMIK should support Serbia and her system of professional institutions as the vital focal point in the chain of decision-making and work related to the reconstruction of Serbian cultural heritage in Kosovo and Metohija (report, paragraph 79). It is necessary that Serbian expert institutions contribute with their knowledge and experience to the reconstruction and protection of Serbian cultural heritage, instead of engaging only some Serbian experts on an individual basis.

Therefore, we recall that the transfer of competences from UNMIK to local Provisional Institutions of Self-Government, which are now institutions of "independent Kosovo", concerning Serbian cultural heritage is unacceptable.

Missing and kidnapped persons

58. There was no meeting of the Working Group for Missing Persons in 2008 because the Priština delegation refused to come under the excuse that, after the November elections, a new one should be formed.

59. Remains of only two identified persons were handed over to Serbia in the period January-March 2008. Identification of 511 others is expected.

60. We recall that recently Carla del Ponte, former Chief Prosecutor of the International Tribunal for the Former Yugoslavia, published a book in which she revealed doubts that Serbs kidnapped in Kosovo and Metohija ended in special "medical institutions" in Albania and that they fell victims of illegal trafficking in organs.

61. We recall that the Tribunal investigated mass graves at undisclosed locations in Kosovo and Metohija for its own purposes. The investigators exhumed 4,019

bodies, out of which 2,001 were identified. Regretfully, the Tribunal has not yet revealed these locations to the Working Group for Missing Persons (operating under the auspices of ICRC).

Kosovo Protection Corps

62. The adoption of laws on the Ministry of Defence, the Kosovo Security Forces (army), and the National Security Council infringes the spirit of resolution 1244 (1999) which provides for substantial autonomy of the province and not for an independent State and certainly not for its armed forces.

63. Representatives of certain European countries' ministries of defence were engaged to assist the establishment of the ministry of defence and army of "independent Kosovo". We recall that resolution 1244 (1999) explicitly asked for demilitarization of Kosovo and Metohija. However, demilitarization has never been achieved. Now, as well as before, only a formal dismantling of existing armed formations and their subsequent organization as an army is planned.

64. The United States President announced in March 2008 that the United States of America would provide arms to "independent Kosovo". Resolution 1244 (1999) set forth demilitarization of KLA. Yet we are witnessing the United States agenda to send arms to ex-KLA fighters. We recall that KLA was on the American list of terrorist organizations!

Enclosure II

By virtue of Article 97, paragraph 1, of the Constitution of the Republic of Serbia, Article 99, paragraph 7, of the Constitution of the Republic of Serbia, Article 182, paragraph 2, of the Constitution of the Republic of Serbia and Articles 134, 135 and 136 of the Rules of Procedure of the National Assembly of the Republic of Serbia (Official Gazette of RS, No. 56/05-correction, and No. 81/06).

The National Assembly of the Republic of Serbia, at its First Extraordinary Meeting, held on 18 February 2008, adopted the following

Resolution of the National Assembly of the Republic of Serbia on the confirmation of the Decision of the Government of the Republic of Serbia on the annulment of the illegitimate acts of the Provisional Institutions of Self-Government in Kosovo and Metohija concerning the proclamation of unilateral independence

I. This resolution reaffirms the Decision of the Government of the Republic of Serbia on the annulment of the illegitimate acts of the Provisional Institutions of Self-Government in Kosovo and Metohija concerning the proclamation of unilateral declaration of independence, and states:

Proceeding from the fact that the Republic of Serbia is an internationally recognized state, one of the founders and members of the Organization of the United Nations, as well as of many other international organizations;

Taking into account that the Republic of Serbia, as all the other Member States of the United Nations, is subject to the fundamental rules and principles of the Charter of the United Nations which guarantee the sovereignty and territorial integrity of independent states within their internationally recognized borders;

With regards to the fact that the Constitution of the Republic of Serbia guarantees the sovereignty and territorial integrity of the Republic of Serbia and that it explicitly stresses that the Province of Kosovo and Metohija forms an integral part of Serbia's territory, has the status of substantive autonomy within the sovereign Serbian state and that, in accordance with such a status of Kosovo and Metohija, all the State institutions, including the Government of the Republic of Serbia, have a constitutional duty to represent and protect the interests of the Republic of Serbia in Kosovo and Metohija;

Given that on 26 December 2007 the National Assembly of the Republic of Serbia adopted the Resolution on the Protection of Sovereignty, Territorial Integrity and Constitutional Order of the Republic of Serbia, which set out that any declaration of Kosovo's independence as well as recognition thereof by any state, would constitute a gross violation of international law and above all of the Charter of the United Nations, the Helsinki Final Act and United Nations Security Council resolution 1244 (1999). Such acts and activities would directly jeopardize the sovereignty, territorial integrity and constitutional order of the Republic of Serbia;

Given that the United Nations Security Council resolution 1244 (1999) explicitly stipulated that Kosovo and Metohija forms an integral part of the Republic of Serbia, that this resolution has confirmed "the commitment of all the states to its sovereignty and territorial integrity" as well as that this legal fact had also been

explicitly stressed in the previous United Nations Security Council resolutions, resolutions 1160 (1998), 1199 (1998), 1203 (1998) and 1239 (1999);

Expressing unreserved commitment to the Charter of the United Nations and to the principles and tenets of the sovereign equality of the United Nations Member States which underpin the Charter, respecting Security Council resolution 1244 (1999), upon which the United Nations mission has been established in Kosovo and Metohija, as well as the strong commitment of the Republic of Serbia to respect the international law that constitutes the cornerstone of the global peace and security;

By virtue of Article 97, paragraph 1, of the Constitution of the Republic of Serbia, Article 182, paragraph 2, of the Constitution of the Republic of Serbia and Article 3, paragraph 1, of the Law on the Government (Official Gazette of RS, Nos. 55/05 and 71/05-correction and 101/07), the Government of the Republic of Serbia has adopted the following

Decision on the annulment of the illegitimate acts of the Provisional Institutions of Self-Government in Kosovo and Metohija concerning the proclamation of unilateral independence

1. The acts and actions of the Provisional Institutions of Self-Government of Kosovo and Metohija concerning the proclamation of unilateral independence are hereby annulled as they violate the sovereignty and territorial integrity of the Republic of Serbia guaranteed by the Constitution of the Republic of Serbia, the Charter of the United Nations, United Nations Security Council resolution 1244 (1999), other relevant Security Council resolutions as well as by the international law in force. These acts and actions represent a forceful and unilateral secession of a part of the territory of the Republic of Serbia and this is why they are invalid and void. These acts and actions do not produce any legal effect either in the Republic of Serbia or in the international legal order. Unilateral secession of a part of the territory of a sovereign state constitutes legal violence against the Republic of Serbia and violence against the international law in force.

2. By this Decision the Government of the Republic of Serbia reasserts that the Autonomous Province of Kosovo and Metohija is an inalienable part of a single and inseparable constitutional and legal order of the Republic of Serbia based on the Constitution of the Republic of Serbia and the Charter of the United Nations.

3. By this Decision the Government of the Republic of Serbia reasserts that Serbs and all other citizens of the province of Kosovo and Metohija who recognize the state of Serbia have full civil rights and are equal citizens of the Republic of Serbia and that they have the full right not to recognize the illegitimate act of declaration of unilateral independence.

4. The Government of the Republic of Serbia asserts its readiness to implement its Constitution and the laws as well as the entire legal order of the Republic of Serbia in the territory of the Autonomous Province of Kosovo and Metohija.

5. The Government of the Republic of Serbia demands from all other public institutions and state bodies of the Republic of Serbia, as laid down by the Constitution, to undertake every constitutional and legal act and action to secure and ensure the unity and inseparability of the territory of the Republic of Serbia guaranteed by the Constitution of the Republic of Serbia, in accordance with resolution 1244 (1999) and the Military Technical Agreement between the

International Security Forces ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia.

6. Recalling the National Assembly Resolution on the Protection of Sovereignty, Territorial Integrity and Constitutional Order of the Republic of Serbia and, in particular, point 5 thereof by which the National Assembly demands from the Government of Serbia to determine with the EU that EU mission may not come to the territory of Serbia, to Kosovo and Metohija, without an appropriate Security Council decision, the Government of the Republic of Serbia considers all the EU decisions on deployment of the EU mission to Kosovo and Metohija invalid. Thus, these decisions produce no legal effect as regards Serbia and its relation with the EU, or as regards its relation with any other entity which would implement the said decisions.

7. The Government of the Republic of Serbia requests the urgent Security Council session which would without delay annul the illegitimate act of unilateral declaration of the Province's independence. The Government of the Republic of Serbia demands from the Special Representative of the United Nations Secretary-General in Kosovo and Metohija to undertake all the actions at his disposal under Security Council resolution 1244 (1999), as well as under the other relevant acts of the said United Nations body, in order to prevent violation of the Charter of the United Nations and Security Council resolution 1244 (1999) and to immediately annul all the acts and actions concerning the Province's unilateral declaration of independence as well as to preclude any further violation of the mentioned resolution, the other relevant acts of the Security Council, the Charter of the United Nations and the rules and principles of the international law in force.

8. The Government of the Republic of Serbia requests from all the United Nations Member States to respect the sovereignty and territorial integrity of the Republic of Serbia in accordance with the international law, Charter of the United Nations and Security Council resolution 1244 (1999).

9. The present Decision will come into force on a day of its publication in the "Official Gazette of the Republic of Serbia".

05 no: 0-661/2008
In Belgrade, February 14, 2008

The Government

Vice-President
Božidar Đelić

II. The present Decision will come into force on a day of its publication in the Official Gazette of the Republic of Serbia.

RS no. 1
In Belgrade, February 18, 2008

National Assembly of the Republic of Serbia

Chairman
Oliver Dulić